IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

IN RE:

WILLIAM A. VANSTEINBERG, III, **Case No. 01-15474**
Chapter 7

Debtor.

J. MICHAEL MORRIS, Trustee,

Plaintiff,

vs. **Adversary No. 02-5151**

KATHRYN A. VANSTEINBERG,

Defendant.

MEMORANDUM AND ORDER

This is an action brought by the Trustee under 11 U.S.C. § 548(a)(1)(B)[1] to avoid two kinds of transfers by Debtor to or for the benefit of his non-debtor spouse made within one year prior to his bankruptcy. The first transfer is of a one-half interest in a 2000 Chevrolet Silverado truck. The second is the transfer of $5,009.43 in funds paid by Debtor directly to third party vendors during the year prior to bankruptcy for expenses related to a horse titled exclusively in Debtor's spouse's name. The parties stipulate that this Court has jurisdiction, which it does under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and the Court is prepared to rule.

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[1]All statutory references are to the Bankruptcy Code, 11 U.S.C. § 101, et seq., unless otherwise specified.

I. Factual Background Surrounding the Silverado Truck

In November of 1999, defendant, Kathryn Vansteinberg (hereinafter "Kathryn"), the spouse of Debtor, William Vansteinberg, needed an automobile to replace one that had been damaged in an accident. Debtor, who was the sole wage earner in the family, purchased a 2000 Silverado Truck for his wife's use. Because her credit history was poor, he purchased and financed it in his name, only. Approximately two years later, on October 19, 2001, and just 26 days prior to filing bankruptcy, Debtor changed the title to the vehicle with the Kansas Department of Revenue, Division of Vehicles to add Kathryn's name to the title along with his.

At the trial of this matter, Debtor testified that the only reason the transfer was made was because the parties were having marital difficulties, and he hoped that putting her name on the title would help resolve those difficulties. The parties have since separated or divorced, and Kathryn still drives the Silverado, but Debtor makes all the payments pursuant to a property settlement agreement. Even before the separation, the undisputed testimony was that Ms. Vansteinberg almost exclusively drove the Silverado, and that the parties treated it as "her car."

On the date of filing, Debtor also owned a 2000 Camaro, which he claimed as exempt on Schedule C, pursuant to K.S.A. 60-2304(c). He listed the Silverado as property held for another—his wife—in response to Question 14 of the Statement of Affairs. He also listed the Silverado on Schedule C, but did not claim any value as exempt to him.

Debtor testified that Twin Lakes National Bank (hereinafter "Twin Lakes") had a lien on the vehicle in the approximate amount of $13,350 as of the date of filing. Debtor was the sole obligor on the Twin

Lakes loan. Both Debtor's sworn Schedules B and C listed the fair market value of the property at $19,075 as of the date of filing. The Trustee is herein attempting to capture the estimated $5,725 equity in the property. At trial, however, Debtor testified that the valuation of the automobile he used in his schedules was suspect, as he had used internet averages instead of having the vehicle appraised. He testified that no repairs had been made to the vehicle following several accidents, and that he doubted it was even worth the amount of the debt against it as of the date of bankruptcy. Debtor now argues, in the alternative, that the Trustee should not prevail because the value of the transferred vehicle "is of little consequence" to the estate.

II. Factual Background Surrounding the Horse

Kathryn owns an Arabian mare, which she purchased for $4,500 with her own assets approximately two years before her husband filed bankruptcy. Uncontroverted evidence at trial indicated the horse is actually worth something less than $1,500, as Kathryn has tried to sell it for that amount and has not been successful. In the same fashion that Debtor paid for all the family's expenses during the year prior to bankruptcy, because he was the only wage earner, and his wife stayed home with their children, he also paid for the expenses associated with his wife's horse, totaling $5,009.43. It is undisputed that Kathryn received none of the $5,009.43; that money was paid as each of the bills became due, directly to third party vendors who supplied care or other supplies or services for the horse during the year prior to bankruptcy. No evidence was presented whether the Debtor or Kathryn had contracted for the services, and, therefore, the Court has no basis to determine whether these were legally Debtor's debts or Kathryn's debts.

Debtor did not ride the horse, and testified he has no interest in horses. He agreed to pay the horse expenses just as he paid for all family expenses. He stated that although Kathryn could have worked and paid for the horse expenses out of her own salary, they had made a decision that he would pay all the family's expenses in exchange for her staying home to care for their minor children and home. He testified the cost of horse care, at $484 a month, which included such things as the cost of entering horse shows and riding lessons, was less than child care would be for their minor children had she had worked outside of the home.

Because this horse is titled only in Kathryn's name, the Trustee contends that the money paid by Debtor for the horse's care within one year of bankruptcy constitutes a transfer for Kathryn's benefit that can be avoided for the estate. He contends she, and not the third party vendors who actually received the money for the horse's care, should be required to repay the money to the bankruptcy estate.

III. Argument and Authorities

Title 11, United States Code § 548(a)(1), provides in pertinent part that:

> "[t]he trustee may avoid any transfer of an interest of the debtor in property . . . that was made . . . on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily –
> . . .
>
> (B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and
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> (ii)(I) was insolvent on the date that such transfer was made . . . ."

A fraudulent transfer is avoidable where the transfer diminishes the assets of the debtor to the detriment of all creditors. *In re Chase & Sanborn Corp.*, 813 F.2d 1177, 1181 (11th Cir. 1987). In determining fair consideration, the Court must focus on what the debtor received in exchange for the transfer, regardless

of what the creditor may have gained or lost. *In re Vinzant*, 108 B.R. 752, 759 (Bankr. D. Kan. 1989). Thus, the value that Debtor received in exchange for the transfers must be "reasonably equivalent." 11 U.S.C. § 548(a)(1)(B)(i).

The burden of proof is on the Trustee to establish each element of a fraudulent transfer under § 548 by a preponderance of the evidence. *See In re Solomon*, 300 B.R. 57, 63 (Bankr. N.D. Okla. 2003) (citing *Kaler v. Craig (In re Craig)*, 144 F.3d 587, 590 (8th Cir.1998); *Barber v. Golden Seed Co., Inc.*, 129 F.3d 382, 387 (7th Cir.1997); 5 COLLIER ON BANKRUPTCY ¶ 548.10, at ¶. 548-80 (Lawrence P. King ed., 15th rev. ed.1998)).

A. Debtor was insolvent at the time of both alleged transfers.

The Debtor disputed that he was insolvent on the date of the transfers in question. During the evidentiary hearing, however, he admitted that he was making only the minimum payment due on his credit cards, which totaled over $40,000, and that he had had these same credit card debts for the year before bankruptcy. Debtor's non-exempt assets totaled $19,761, and his unsecured debt, alone, was $57,489. In addition, Debtor's counsel did not seriously argue that he was solvent at the time of the transfers, nor did he brief the issue post-trial. Accordingly, the Court finds that the evidence presented at trial by the Trustee was clear that the Debtor was insolvent, as that term is defined in the Code. 11 U.S.C. § 101(32)

B. The transfer of one-half of the title to the Silverado on eve of bankruptcy constitutes a fraudulent transfer.

Debtor and Kathryn dispute whether adding her name to the title of the Silverado within a month of filing actually constitutes a "transfer," at all. They argue that pursuant to K.S.A. 8-135a (2002), this decision to place Kathryn on the title was done merely to correct the title, because they agreed her name

should be on all the marital assets for the purposes of marital harmony. Admittedly the Kansas statute provides a simple and inexpensive method to add a spouse's name to the title of a vehicle, but it does not explain why that procedure was not used between the time the vehicle was purchased, in November of 2000, and October 2001, when the title was changed shortly before bankruptcy. Furthermore, no evidence was given why, even if Debtor was the sole obligor on the note, Kathryn's name could not have been noted on the title at the time of its purchase.

More importantly, the Tenth Circuit Court of Appeals has rejected a similar argument in *Taylor v. Rupp*, 133 F.3d 1336 (10th Cir. 1998). In *Taylor*, Harold and Julie Taylor jointly purchased a 1990 Jeep, and titled it in both names. A year later, just seventeen days before Harold Taylor filed bankruptcy, they traded that car in, valued at $11,487, as partial payment on a new car, but titled the new car only in the non-debtor spouse. When the trustee tried to avoid the transfer, Julie claimed that the 1990 Jeep really should have just been titled in her name in the first instance, and that the two were merely correcting this title error when they purchased the second vehicle and titled it only in her name. The Tenth Circuit affirmed the Bankruptcy and District Courts, which had granted the trustee a money judgment for one-half the allowance for the jointly owned Jeep the parties had traded in shortly before bankruptcy.

Here, Debtor transferred one-half of his 100% ownership interest in the Silverado to his wife on the eve of bankruptcy. The word "transfer" is broadly defined in § 101(54) as every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property. The comment to that section states that "[t]he definition of transfer is as broad as possible." *See In re C-L Cartage Co., Inc*., 899 F.2d 1490, 1494 (6th Cir. 1990) (quoting S. Rep. No. 95-989, 95th Cong., 2d Sess. 27, *reprinted in* 1978 U.S. Code Cong. & Admin.News 5787, 5873,

5878). A transfer is avoidable under § 548 if the debtor did not receive reasonably equivalent value (§ 548(a)(1)(B)) or if the transfer was made with the actual intent to hinder, delay or defraud creditors (§ 548(a)(1)(A)).

The Trustee has not argued there was actual intent to hinder, delay or defraud, and thus the Court must only determine whether Debtor received reasonably equivalent value for his transfer of a one-half interest in the vehicle to his wife on the eve of bankruptcy. Value is defined as "property, or satisfaction or securing of a present or antecedent debt of the debtor, but does not include an unperformed promise to furnish support to the debtor or to a relative of the debtor." 11 U.S.C. § 548(d)(2)(A).

Kathryn argues that her agreement to forego employment outside the home, to take care of the family, and to in essence provide comfort, advice, and society as Debtor's wife, constitutes value. The Trustee argues that "value" is limited to economic or monetary consideration, and that the care and comfort one receives from a marital relationship does not qualify. He argues that value is not measured from Kathryn's subjective, emotional perspective, but instead from the objective, economic perspective of the Debtor's creditors.

As the Tenth Circuit Bankruptcy Appellate Panel held in *Zubrod v. Kelsey* (*In re Kelsey*), 270 B.R. 776 (10th Cir. B.A.P. 2001), a factually similar case, "[a]lthough no one has disputed [Kathryn's] commitment to her family, she did not offer, nor have we located a single case that holds, that the love and support of a spouse constitutes reasonably equivalent value for purposes of 11 U.S.C. § 548." Furthermore, the Trustee persuasively argues, as did the trustee in *In re Kelsey*, that if love and affection were sufficient consideration to support a pre-petition transfer between family members, the purpose of § 548 would be easily and invariably circumvented. A debtor would be free to transfer all non-exempt

property to those who loved the debtor best, effectively depriving the bankruptcy estate of any assets from which distribution could be made to creditors. *In re Kelsey*, 270 B.R. at 780 n.7.

The Court in *Kelsey* also noted that even where indirect benefits are considered in determining the existence of "value" for purposes of § 548, the value must be quantified. *Id.* at 782. Here, the record is devoid of evidence quantifying the value of "benefits" Kathryn bestowed on Debtor in consideration of the transfer of a one-half interest in the Silverado. We, therefore, conclude that Kathryn provided no reasonably equivalent value cognizable under § 548, and the transfer must be avoided.

The Court will not accept Debtor's new argument that, in retrospect, he inserted an inflated value for the Silverado in his sworn schedules, and that the Court should decline to order turnover of the vehicle because it has inconsequential value to the estate. The Court, creditors and the trustee must all be able to trust that a debtor's sworn schedules are, in fact, accurate.

Having determined the transfer from Debtor to his non-debtor spouse must be avoided, the Court must provide for a remedy. In a normal avoidance case, the transfer is avoided, and the money or property transferred is returned to the estate. *See* §§ 544(a), 550 and 551. In the Pretrial Order, which supersedes the pleadings, the Trustee has prayed for recovery of the property, the one-half interest in the Silverado that was conveyed to Kathryn, so that the estate will therefore be able to sell the entire Silverado for the benefit of the estate, subject, of course, to the debt against it owed to Twin Lakes.

In his post-trial brief, the Trustee requests, instead, judgment in the "approximate" amount of $5,500. Because that relief was not requested in the Pretrial Order, the Court will not grant that relief. Accordingly, within twenty (20) days from the date of this order, or no later than December 16, 2004,

Debtor and Kathryn A. Vansteinberg shall deliver the vehicle, as well as all keys and installed accessories, to the Trustee at the location of his choosing in Wichita, Kansas.

C. The payment by Debtor, directly to third party vendors, of family expenses for horse-related costs does not constitute fraudulent conveyance.

The evidence at trial was that Debtor paid the horse-related expenses directly to the vendors as those bills came due. The Trustee presented no evidence whether Debtor had directly contracted with the vendors for horse boarding, or other related expenses, or whether the contract for services was made by Kathryn. In other words, the Trustee did not prove that these debts were all solely Kathryn's, and that payment of those expenses did not provide Debtor value in the form of being relieved of a potential suit for the collection of those expenses against him, personally, at some time in the future. Instead, the Trustee impliedly asked the Court to assume that because Kathryn owned the horse, that by definition Debtor could not have incurred liability for any expenses connected therewith. Because the Trustee carries the burden of proof on this element, he did not establish that Debtor received no value for paying these bills.

In addition, even if Debtor had no personal liability for the horse-related expenses, the Court does not see the distinction between those bills paid by the Debtor on behalf of his wife and the myriad other household expenses that are routinely paid by a Debtor for the benefit of a non-debtor spouse when the Debtor is the sole wage earner in the family. The expenses the Trustee is trying to recover included such expenses as riding lessons and horse show fees, which the Court sees no differently than a line-item expense for "recreation and entertainment." The bills also included veterinarian bills. Debtor testified he also paid very expensive veterinarian bills for one of the family's dogs, and the Court finds it difficult to

distinguish that kind of expense, which the Trustee does not seek to recover, from a veterinarian bill for this particular horse, which he does seek to recover.

Especially given the relatively low value of this horse, the Court views these horse related costs as an expense of the family, albeit a high expense given that owning a horse is obviously not a family necessity, no different than had Debtor paid $5,000 in elective surgery for his wife during the year prior to bankruptcy, paid $5,000 to take her on a vacation, paid for gasoline or repairs to a car she owned, or paid her share of the family's restaurant bills, grocery bills, utility bills, etc. Similarly, Debtor's schedules reflected a monthly clothing bill of $520, of which undoubtedly some significant portion belonged to Kathryn and Debtor's children, but the Trustee is not trying to recover those clothes or the amount Debtor spent for those clothes, from Kathryn or his children.

Although in retrospect, Debtor's decision to pay these large expenses for riding lessons, boarding costs, horse shows, and veterinarian bills, as well as his decision to pay, each month, $975 for food for a family of four, $229 for recreation, $880 for two car payments, $142 for cell phones, $129 for health club dues, $229 for personal care, or $520 for clothing, may not have been financially sound ones, in light of his mounting debt, the Court will not under the unique facts of this case tell this Debtor, after the fact, that similar amounts spent herein for what the family treated as a routine monthly expense, are subject to recovery by a trustee under § 548. Thus, the Court denies that part of the Trustee's complaint that seeks recovery of $5,009.43, representing horse-related expenses. *Cf*. *In re Craig*, 144 F.3d 587, 590 (8th Cir. 1998) (refusing to find fraudulent transfer of sums held in non-debtor spouse's bank account, accumulated while her debtor husband paid the bulk of the family expenses within year of filing bankruptcy, and declining to conclude that one spouse's contributions so overwhelmed other's as to constitute transfer of assets

between marital partners, given a husband and wife have duty to support one another under North Dakota law).

IV. Conclusion

Debtor's transfer of a one-half interest in the 2000 Silverado truck to his non-debtor spouse within one year of bankruptcy, for no monetary or economic value, constitutes a voidable transfer under 11 U.S.C. § 548(a)(1)(B). Debtor's payment of miscellaneous expenses related to the family horse, albeit owned by Defendant Kathryn Vansteinberg, as they became due, directly to the vendors, over the year prior to bankruptcy, does not constitute a voidable transfer under § 548(a)(1)(B).

IT IS, THEREFORE, BY THIS COURT ORDERED that Debtor and Defendant Kathryn Vansteinberg shall turn over and surrender to the Trustee, at a location in Wichita, Kansas of his choosing, within twenty (20) days of the entry of this Order, the 2000 Silverado, with all keys and installed accessories intact, so that the Trustee may liquidate the asset for payment of Debtor's creditors.

IT IS FURTHER ORDERED that the Trustee's claim for recovery of $5,009.43 in horse-related costs from Defendant Kathryn Vansteinberg is denied.

IT IS FURTHER ORDERED that the foregoing constitutes Findings of Fact and Conclusions of Law under Rule 7052 of the Federal Rules of Bankruptcy Procedure and Rule 52(a) of the Federal Rules of Civil Procedure. A judgment based on this ruling will be entered on a separate document as required by Federal Rules of Bankruptcy Procedure 9021 and Federal Rule of Civil Procedure 58.

Dated this 26th day of November, 2003.

JANICE MILLER KARLIN, Bankruptcy Judge
United States Bankruptcy Court
District of Kansas

CERTIFICATE OF MAILING

The undersigned certified that copies of the Memorandum and Order was deposited in the United States mail, prepaid on this 26th day of November, 2003, to the following:

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